

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 00-0097 CG**

**Charity Gaming**

**Appeal of Emergency Revocation of Charity Game License**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Charity Gaming – Investigations and other Proceedings**

**Authority:** IC 4-32-7-2; Scotten v. Longfellow, 40 Ind. 23 (1872).

The Fraternal Order of Eagles Lodge #1065 (hereinafter referred to as Petitioner) protests the Department's emergency revocation of its charity gaming license

**II. Charity Gaming – Powers of the Department**

**Authority:** IC 4-32-13-2

The Petitioner protests the Department's emergency revocation of its charity gaming license.

**III. Charity Gaming – Grounds for Penalties**

**Authority:** IC 4-32-12-1(5)

The Petitioner protests the Department's emergency revocation of its charity gaming license.

**IV. Charity Gaming – License Revocation**

**Authority:** 45 IAC 18-6-3

The Petitioner protests the Department's emergency revocation of its charity gaming license.

## **STATEMENT OF FACTS**

On Monday, January 31, 2000, two (2) subpoena duces tecum were served on the Petitioner by the Indiana Department of State Revenue. The Petitioner failed to honor the subpoenas by failing to produce the documents at or before the requested date and time. On Wednesday, February 2, 2000, an Indiana Department of State Revenue's investigator was conducting an investigation of the Petitioner's organization. Petitioner's representatives forced the Department's investigator to stop the investigation, and the Department's investigator was ordered to leave Petitioner's premises.

In this case, the Petitioner requested an administrative hearing pursuant to IC 6-8.1-5-1 as a result of an emergency revocation of the Petitioner's charity gaming license by the Indiana Department of State Revenue. Pursuant to 45 IAC 18-6-3 the Department made a determination that an emergency existed that would require the immediate termination of the Petitioner's license.

The Department notified the Petitioner of the emergency revocation of its license in a letter dated February 14, 2000. The Department's letter was hand delivered to Petitioner that same day. The Petitioner filed a timely protest on February 15, 2000. An administrative hearing before the Department was set for Wednesday, February 23, 2000, at the request of the Petitioner. A transcript of the hearing was received by the Department on Monday, February 28, 2000.

### **I. Charity Gaming – Investigations and other Proceedings**

#### **DISCUSSION**

Indiana Code section 4-32-7-2 provides in pertinent part:

For purposes of conducting an investigation or proceeding under this article, the department may do the following: ...

(3) Issue subpoenas.

(4) Compel the... production of books, papers, documents, and other evidence.

The Department began an investigation of Petitioner's charity gaming operation. In furtherance of the Department's duties in carrying out the charity gaming laws (IC 4-32 et seq.) the Department sent an investigator to Petitioner's location to conduct an investigation. The Department first issued two (2) subpoena duces tecum pursuant to IC 4-32-7-2 on Monday, January 31, 2000. (Department's Exhibits #1 & #2). The Petitioner, who had been cooperative up to this point, decided not to honor the subpoenas. (Department's Exhibit #3) The Petitioner states that they refused to honor the subpoenas upon advice of counsel. Subsequent to the emergency revocation of its license the Petitioner retained new counsel who has agreed to cooperate fully with the

Department's investigation. However, this does not negate the Petitioner's violation of Indiana law. Likewise, it has long been the law in Indiana that the purported reliance upon counsel's advice does not relieve an individual of the ultimate responsibility for one's actions. Scotten v. Longfellow, 40 Ind. 23 (1872).

The Petitioner's failure to honor the Department's subpoenas is a clear violation of the aforementioned code section.

### **FINDING**

The Petitioner's protest is denied.

## **II. Charity Gaming – Powers of the Department**

### **DISCUSSION**

Indiana Code section 4-32-13-2 provides in pertinent part:

At the direction of the commissioner, the department may do any of the following:

- (1) Investigate an alleged violation of this article...
- (3) Enter upon the following premises for the performance of their lawful duties: ...
- (5) Obtain full access to all financial records of the entity upon request.

On Wednesday, February 2, 2000, the Department's investigator was told to stop her investigation and leave the premises by "Mr. G" who was one of the Trustees of Petitioner's organization. (Record at 73). Several other individuals were present when the statement was made, but all failed to countermand "Mr. G's" order to cease and desist. (Record at 76 and 80). The Department's investigator reluctantly terminated her investigation and left the premises. (Record at 20). The Petitioner's failure to allow the Department's investigator to conduct an inspection of its records is a clear violation of the aforementioned code section.

### **FINDING**

The Petitioner's protest is denied.

## **III. Charity Gaming – Grounds for Penalties**

### **DISCUSSION**

Indiana Code section 4-32-12-1 provides in pertinent part:

The department may suspend or revoke the license of or levy a civil penalty against a qualified organization or an individual under this article for any of the following:

- (1) Violation of a provision of this article or of a rule of the department...
- (5) Conduct prejudicial to public confidence in the department.

The Department is required by law to conduct investigations necessary to ensure the security and integrity of the operation of games of chance under this article. IC 4-32-13-3. The Petitioner's actions interfered with the Department's investigation of its operations. If these actions were allowed to go unchecked they would invariably diminish the public's confidence in the Department's ability to protect its citizens.

### **FINDING**

The Petitioner's protest is denied.

#### **IV. Charity Gaming – License Revocation**

### **DISCUSSION**

45 IAC 18-6-3 provides in pertinent part:

(c) An emergency requiring the immediate termination of a license will be deemed to exist under any of the following circumstances: ...

- (13) Any other violation of IC 4-32 or this article considered to be of a serious nature by the department.

The Petitioner's violations of IC 4-32-7-2, IC 4-32-13-2, IC 4-32-23-3, and IC 4-32-12-1 are of a serious nature in that they prohibited the Department from carrying out its duties as prescribed by Indiana law. The actions of the Petitioner (a complete disregard for the law) being serious enough to constitute an emergency by the Department, are grounds for the immediate termination of the Petitioner's license. The Petitioner has stated that they intend to cooperate fully in the Department's investigation and request that their license be reinstated. The Hearing Officer does not have the authority to reinstate the Petitioner's license. The Petitioner's license was terminated, and that determination was upheld in hearing. The Petitioner having lost its license to conduct charity gaming must reapply for a license if they wish to once again conduct charity gaming. If the Petitioner reapplies for a license a public hearing must be held pursuant to IC 4-32-9-5(g).

### **FINDING**

The Petitioner's protest is denied.